

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Cole's Services, Inc
1620 E Brundage Lane
Bakersfield, CA 93307

EPA ID No, :CAL 000 268 462

Respondent

Docket HWCA 2004 0487

STIPULATION AND ORDER

Health and Safety Code

Section 25187

The State Department of Toxic Substances Control
Department) and Cole's Services, Inc..(Respondent) enter into this
stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the Enforcement Order
issued by the Department on June 17, 2004,.(Attached as Exhibit 1.)

2. The parties wish to avoid the expense of further
litigation and to ensure prompt action to achieve the Schedule for
compliance below,.

3. Jurisdiction exists pursuant to Health and Safety Code
Section 25187.

4. Respondent waives any right to a hearing in this
matter

5. This Order shall constitute full settlement of the
violations alleged in the Enforcement Order, but does not limit the
Department from taking appropriate enforcement action concerning
her violations

6. Respondent admits the allegations made in the Enforcement Order.

SCHEDULE FOR COMPLIANCE

7. Respondent has corrected the violations cited in the Enforcement Order,. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited therein,

7.2. Submittals: All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Mr. Roberto Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

7.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control., or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required..

7.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes,,

7.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety,.

7.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation or such period of time as needed to abate the endangerment,. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order,,

7.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order,. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment,.

7.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction,. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter

and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order, .

1 7.9. Sampling, Data, and Document Availability;
1 Respondent shall permit the Department and its authorized
1 representatives to inspect and copy all sampling, testing,
1 monitoring, and other data generated by Respondent or on
1 Respondent's behalf in any way pertaining to work undertaken
1 pursuant to this Order, . Respondent shall allow the Department and
1 its authorized representatives to take duplicates of any samples
1 collected by Respondent pursuant to this Order.. Respondent shall
18 maintain a central depository of the data, reports, and other
19 documents prepared pursuant to this Order.. All such data, reports,
20 and other documents shall be preserved by Respondent for a minimum
21 of six years after the conclusion of all activities under this
22 order. If the Department requests that some or all of these
23 documents be preserved for a longer period ~~of~~ time, Respondent shall.
24 either comply with that request, deliver the documents to the
25 department, or permit the Department to copy the documents prior to
26 destruction. Respondent shall notify the Department in writing at
27 least six months prior to destroying any documents prepared pursuant
28 to this Order, ,

7.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 9.3 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order..

7.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval. and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department,.

7.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing,. The extension request shall include a justification for the delay..

7.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will, grant the request and specify in writing a new compliance schedule..

PAYMENTS

8.1. Respondent shall pay the Department a total of \$12,000 in penalties. The payments shall be paid in four (4) installments of \$3,000 each. The four (4) installments are due and payable as follows: on October 1, 2004, January 1, 2005, April 1, 2005, and July 1, 2005,. Any installment payment that is received by the Department more than 15 days after it is due will be subject to a \$250 penalty, such penalty shall be paid by Respondent no later than the due date of the next installment payment. If the Respondent is late in making two (2) or more payment, or fails to

make a full installment payment, Respondent agrees to pay interest thereon at the rate established pursuant to Health and Safety Code section 25360.0. Respondent further agrees to pay all costs and attorney's fees incurred by the Department in pursuing the collection of any sums the payment of which becomes delinquent hereunder. Respondent's checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Robert Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

8.2. Respondent hereby agrees to send one employee to the California Compliance School, Modules I-IV.. Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department of Toxic Substances Control within 185 days of the date of this Order. In recognition of this educational investment, the penalty imposed by this Order has been reduced by \$5,000.00 if the employee satisfactorily completes the specified school and the Department receives the Certificate of Satisfactory Completion within 185 days of the effective date of this Order,. If Respondent fails to submit the certificate as required, the penalty of \$5,000.00 is due and payable within 30 days after the 185-day period expires. The 185-day period may be extended by a Department Branch

Chief upon a written request demonstrating good cause from Respondent.

OTHER PROVISIONS

9.1. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order,,

9.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law..

9.3 Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order..

9.4 Effective Date: The effective date of this Order is the date it is signed by the Department,.

9.5. Intesration: This agreement constitutes the entire greement between the parties and may not be amended, supplemented, r modified, except as provided in this agreement,.

Dated: 10-18-04

Donita McNeill
Signature of Respondent's
Representative

Bonita McNeill - Secretary/Treas.
Typed or Printed Name and Title of
Respondent's Representative

Dated: Oct. 25, 2004

Robert Kou
Robert Kou, Unit Chief
Department of Toxic Substances
Control

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Dated :- 10/18/04

Original Signed by Respondents's Representative

Signature of Respondent's Representative

Original Signed by Secretary/Treas.

Typed or Printed Name and Title of
Respondent's Representative

Dated: Oct 25, 2004

Original Signed by Roberto Kou

Roberto Kou Unit Chief
Department of Toxic Substances
Control

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